IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.373 OF 2007
IN
M.C.O.C.A. CASE NO.18 OF 2005
(DCB CID UNIT-IX C.R.NO.27 OF 2005)

Abdul Karim Abdul Latif
Shaikh ...Applicant.

Versus

The State of Maharashtra ...Respondent.

....

Mr.Sushan Kunjuraman, Adv. for the Applicant.
Mr.S.R.Shinde, APP, for the State.

....

CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 28th March, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned APP for the State.

2. The applicant is seeking bail in C.R.No.27 of 2005 of DCB CID Kandivli Unit-IX. The said case is under Sections 3(1)(ii), 3(2), 3(4) and 3(5) of the MCOC Act, 1999.

3. It is the prosecution case that the complainant had received threatening calls on his mobile phone, demanding ransom of Rs.50 lacs on

13.1.2005 from one person who gave his name as Ijaz Lakdawalla. Thereafter in the month of February, he again received similar threatening calls from different persons who demanded money for Ijaz. On 23.2.2005, two persons who were passing by the shop of the complainant on motorcycle, opened fire towards the complainant and drove away. It is the case of the prosecution that the applicant used to collect money for the organised crime syndicate of Ijaj Lakadawalla.

4. The learned Advocate for the applicant has submitted that the applicant has not been named in the FIR and there is no recovery at the instance of applicant. The learned Advocate for the applicant has further submitted that there is no material which would implicate the applicant in this crime.

5. On behalf of the prosecution, it is pointed out that there are two confessional statements of coaccused wherein the applicant has been implicated. Coaccused Yusuf Ismail Khanioya in his confessional statement has stated that the applicant used to collect money for the organised

crime syndicate of Ijaj Lakadawalla.

6. In the confessional statement of coaccused Mohd. Khalid Asgar Ali Khan, he has stated that he received Rs.1 lac from Yusuf and the applicant and he paid the said amount to the shooters who were supposed to fire at shop of Rainbow Toys. Thus, role of the applicant is very much specified in the charge-sheet. It is well settled that in view of Section 18 of the MCOC Act, confessional statement of the co-accused can be relied upon during the trial.

7. The learned APP has stated that charge has been framed and the summons have been issued to the witnesses and the matter is kept on 9/10th April, 2007.

8. Looking to all these facts, I do not think that this is a fit case to grant bail to the applicant. It may be stated here that the learned Advocate for the applicant has submitted that the applicant was not arrested on 7.3.2001 as is the case of the prosecution, but, infact the applicant was in custody 10 days prior to that and he was

kept in illegal detention in the lock-up. The learned APP has denied this and has stated on instructions that the applicant was taken into custody only on 7.3.2001. Be that as it may, it is an admitted position that as of today the applicant is in legal custody and his custody is not illegal. In a case where it is alleged that the person was illegally kept in custody and hence he should be released, the said prayer can be considered only if at the time of hearing of the matter, the person still continues to be in illegal custody. It has been so observed in the case of **Ramnarayan Sing Vs. State of Delhi,** reported in **AIR 1953 SC 277**; in the case of **Babu Nandan Mallah Vs. The State**, reported in **(1971 Pat LJR 605) : (1972 Cri LJ 423)**; and in the Full Bench decision of the Patna High Court in the case of **Rabindra Rai Vs. State of Bihar,** reported in **1984 CRI.L.J.1412**. Hence, this also cannot be a good ground to release the applicant on bail. Application is rejected.

(SMT.V.K.TAHILRAMANI,J.)